IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

INTELLECTUAL VENTURES I LLC, Plaintiff, v. T-MOBILE USA, INC., T-MOBILE US, INC., ERICSSON INC., and TELEFONAKTIEBOLAGET LM ERICSSON, Defendants.	Civil Action No. 2:17-cv-00577-JRG **JURY TRIAL DEMANDED** **FILED UNDER SEAL**

PLAINTIFF INTELLECTUAL VENTURES I LLC'S SUR-REPLY IN OPPOSITION TO DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE EXPERT OPINIONS OF DR. DOUGLAS A. CHRISSAN

I. INTRODUCTION

There is no dispute that Dr. Chrissan has the expertise required to analyze the strengths and weaknesses of patents covering LTE technology. IV established that Dr. Chrissan performed a patent comparability analysis that is grounded in Federal Circuit case law and Ericsson's own licensing practices. In reply, Defendants rehash their opening arguments and respond to IV's arguments in generic terms, if at all, making it clear that their criticisms of Dr. Chrissan's analysis go to the weight of the evidence rather than its admissibility.

II. ARGUMENT

A. Defendants' Dispute Regarding Differences Between Its Licensing Practices and Dr. Chrissan's Analysis Goes to the Weight of the Evidence

[redacted] IV showed that Dr. Chrissan's and Dr. Bratic's coordinated technical-business analysis, intended to simulate hypothetical negotiations under *Georgia-Pacific*, [redacted] Defendants reply with generic criticisms that [redacted] These are plainly the type of complaints that go the weight of expert testimony, not admissibility, and Ericsson will have the opportunity to cross-examine Dr. Chrissan to attempt to show the jury [redacted]

Defendants' attempt to show that Dr. Chrissan offered no "real analysis" (Br. at 3) falls flat, and the sole example they selected shows that Dr. Chrissan provided specific grounds for his conclusions. Paragraph 149 of his report does not set forth a conclusory statement that the patent

at issue is likely to be found invalid. To the contrary, Dr. Chrissan specifically identified the concept at issue, explained that it was "simple" and that there was "nothing unique or novel about assigning a temporary ID to a remote station to base station connection," and explained that this was a "common" concept in the art. (Br. at 3). Defendants complain that "[n]o expert could easily replicate his analysis" (Br. at 4), but any expert, if it were true, could easily respond that the concept was **not** "simple" and "common" in the art. The next paragraph of Defendants' brief further proves the point for IV: [redacted]

B. The *Mega Systems* Case Does Not Bar Dr. Chrissan's Opinions

Defendants rehash their argument on the *Mega Systems* case. (Br. at 5). IV showed that the case is facially vague, but seems to be directed to patent valuation in a bankruptcy case. There is no basis for broadly extending the case to preclusion of a technical expert offering technical analysis of patent comparability, a practice that has been well-established by the Federal Circuit to support a patentee's damages claim. *See, e.g., Commonwealth Scientific & Indus. Research Org. v. Cisco Sys., Inc.*, 809 F.3d 1295, 1303-04 (Fed. Cir. 2015); *Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1296 (Fed. Cir. 2015); *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1333 (Fed. Cir. 2012).

Defendants grossly overreach by citing to Dr. Chrissan's testimony that [redacted] The remainder of Dr. Chrissan's cited testimony shows just the opposite. [redacted] The fact that the portfolio he analyzed here was larger than other portfolios he

analyzed is a subject for cross-examination if Defendants think that will be of importance to a jury, but it is plainly not grounds for exclusion.

III. CONCLUSION

For the foregoing reasons, IV respectfully requests that the Court deny Defendants' *Daubert* Motion.

DATED: December 20, 2018

Respectfully submitted,

/s/ Martin J. Black

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CERTIFICATE OF SERVICE

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CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the foregoing document and attachments thereto are authorized to be filed under seal pursuant to the Protective Order entered in this case.

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